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March 16, 2018

QS Holdco Inc. v. Bank of Am. Corp., et al., No. 1:18-cv-00824-RJS (S.D.N.Y.)

Dear Judge Sullivan:

We write on behalf of all parties in the above-referenced action respectfully to request that the Court enter the attached stipulation reflecting the parties' agreement regarding service, voluntary dismissal of certain defendants, and a schedule for the efficient management of this matter.

Plaintiff QS Holdco Inc. ("Plaintiff") has asserted antitrust and state law claims regarding an electronic stock loan trading platform, AQS. The allegations parallel those raised in a putative class action currently pending before Judge Failla. *See Iowa Public Employees' Retirement System, et al. v. Bank of America Corp., et al., No. 17-cv-6221 (S.D.N.Y.)*.<sup>1</sup>

However, Defendants have raised the threshold issue of whether Plaintiff has standing or capacity to sue. On July 27, 2015, Quadriserv (AQS's former owner and operator) transferred the AQS trading platform to PDQ Inc. (Plaintiff's predecessor). (*See* Compl. ¶¶ 18, 37-38.) On July 31, 2016, PDQ Inc. transferred the AQS trading platform to Defendant EquiLend. (*See id.* ¶¶ 21, 39.) Pursuant to the 2016 Purchase Agreement, Defendants maintain that the right to bring the asserted claims was transferred to Defendant EquiLend. Plaintiff alleges, nonetheless, that "[u]pon the sale of AQS to EquiLend, QS Holdco and Quadriserv became the only entities remaining to prosecute antitrust claims" set forth in the Complaint, and that on January 25, 2018, Quadriserv "assigned its antitrust and other claims against Defendants to [Plaintiff] QS Holdco". (*See id.* ¶¶ 40-41.)

The parties agree that the most reasonable and efficient initial path forward in this case is to permit the parties to brief and obtain a decision from this Court on the threshold issue of

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<sup>1</sup> Plaintiff filed this case as related to the putative class action, but it was declined by Judge Failla and thereafter assigned to Your Honor.

standing and capacity to sue, and to proceed into the other substantive motion to dismiss arguments only if the Court determines that Plaintiff has standing and capacity to sue.

To this end, the enclosed stipulation contains the parties' proposed briefing schedule on Defendants' forthcoming motion to dismiss for lack of standing and capacity to sue:

Defendants' Pre-Motion Letter (3 Pages)	March 23, 2018
Plaintiff's Pre-Motion Letter Response (3 Pages)	April 4, 2018
Defendants' Joint Opening Brief (20 Pages)	No later than 45 days after the pre-motion conference
Plaintiff's Opposition Brief (20 Pages)	No later than 45 days after the filing of Defendants' opening brief
Defendants' Reply Brief (10 Pages)	No later than 21 days after the filing of Plaintiff's opposition brief

Should the Court ultimately deny Defendants' motion on standing and capacity to sue, the parties agree that Defendants will proceed to file their further motion(s) to dismiss on the substance of the allegations, including arguments similar to those raised in Defendants' recent motions to dismiss the putative class action pending before Judge Failla. *See* ECF Nos. 107, 110, *Iowa Public Employees' Retirement System, et al. v. Bank of America Corp., et al.*, No. 17-cv-6221 (S.D.N.Y.). The parties propose that Defendants would answer, move against or otherwise respond to Plaintiff's complaint within 45 days of any denial of the standing/capacity motion, with Plaintiff's opposition to the motion(s) to dismiss due 45 days later, and Defendants' reply due 30 days after that.

Respectfully,



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Honorable Richard J. Sullivan  
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VIA ECF AND EMAIL

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

QS HOLDCO INC.,

Plaintiff,

- against -

BANK OF AMERICA CORPORATION, *et al.*,

Defendants.

No. 18 Civ. 00824 (RJS)

**STIPULATION AND [PROPOSED] ORDER REGARDING SERVICE, SETTING TIME  
FOR DEFENDANTS TO ANSWER, MOVE OR OTHERWISE RESPOND TO THE  
COMPLAINT, AND VOLUNTARY DISMISSAL OF CERTAIN DEFENDANTS**

WHEREAS, on January 30, 2018, QS Holdco Inc. (“Plaintiff”) filed a complaint (the “Complaint”) in the above-captioned action against the defendants (“Defendants”);

WHEREAS, there has been no prior request to extend any deadlines in the above-captioned action;

WHEREAS, undersigned counsel for Defendants Bank of America Corporation; Merrill Lynch, Pierce, Fenner & Smith Incorporated; Merrill Lynch L.P. Holdings, Inc.; and Merrill Lynch Professional Clearing Corp. have represented that Defendant Bank of America Corporation does not engage in the business of securities lending;

WHEREAS, undersigned counsel for Defendants Credit Suisse AG; Credit Suisse Group AG; Credit Suisse Securities (USA) LLC; Credit Suisse First Boston Next Fund, Inc.; and Credit Suisse Prime Securities Services (USA) LLC have represented that Defendant Credit Suisse Group AG does not engage in the business of securities lending;

WHEREAS, undersigned counsel for Defendants The Goldman Sachs Group, Inc.; Goldman Sachs & Co. LLC; and Goldman Sachs Execution & Clearing, L.P. have represented that Defendant The Goldman Sachs Group, Inc. does not engage in the business of securities lending;

WHEREAS, undersigned counsel for Defendants J.P. Morgan Chase & Co.; J.P. Morgan Securities LLC; J.P. Morgan Prime, Inc.; J.P. Morgan Institutional Investments Inc.; J.P. Morgan Strategic Securities Lending Corp.; and JPMorgan Chase Bank, N.A. have represented that Defendants J.P. Morgan Chase & Co. and J.P. Morgan Institutional Investments Inc. do not engage in the business of securities lending;

WHEREAS, undersigned counsel for Defendants Morgan Stanley; Morgan Stanley Capital Management, LLC; Morgan Stanley & Co. LLC; Prime Dealer Services Corp.; Strategic Investments I, Inc.; and Morgan Stanley Distribution, Inc. have represented that Defendants Morgan Stanley, Morgan Stanley Capital Management, LLC, and Morgan Stanley Distribution, Inc. do not engage in the business of securities lending;

WHEREAS, undersigned counsel for Defendants UBS Group AG; UBS AG; UBS Americas Inc.; UBS Securities LLC; UBS Financial Services Inc.; UBS Investment Bank; UBS Asset Management (US) Inc.; and UBS Fund Services (USA) LLC have represented that Defendant UBS Investment Bank is not a legal entity and Defendants UBS Group AG, UBS Asset Management (US) Inc., and UBS Fund Services (USA) LLC do not engage in the business of securities lending;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED:

1. Pursuant to Federal Rule of Civil Procedure 41(a)(1), Plaintiff hereby voluntarily dismisses all claims against Defendants Bank of America Corporation; Credit Suisse Group AG;

The Goldman Sachs Group, Inc.; J.P. Morgan Chase & Co.; J.P. Morgan Institutional Investments Inc.; Morgan Stanley; Morgan Stanley Capital Management, LLC; Morgan Stanley Distribution, Inc.; UBS Investment Bank; UBS Group AG; UBS Asset Management (US) Inc.; and UBS Fund Services (USA) LLC without prejudice to their inclusion at a later time should evidence arise in discovery or otherwise that reveals information contrary to the above-referenced representations of counsel, and the Parties agree that any statute of limitations, statute of repose, or other time-related defense or claim shall be tolled as to the dismissed Defendants only as if the claims were filed on January 30, 2018, the original filing date of the Complaint.

2. The undersigned counsel agree to accept service of process in the above-captioned lawsuit on behalf of the following Defendants, expressly reserving the right to contest whether any party in the Complaint is properly named, and without waiver of any defenses, including those related to personal jurisdiction and venue: Merrill Lynch, Pierce, Fenner & Smith Incorporated; Merrill Lynch L.P. Holdings, Inc.; Merrill Lynch Professional Clearing Corp.; Credit Suisse AG; Credit Suisse Securities (USA) LLC; Credit Suisse First Boston Next Fund, Inc.; Credit Suisse Prime Securities Services (USA) LLC; Goldman Sachs & Co. LLC; Goldman Sachs Execution & Clearing, L.P.; J.P. Morgan Securities LLC; J.P. Morgan Prime, Inc.; J.P. Morgan Strategic Securities Lending Corp.; JPMorgan Chase Bank, N.A.; Morgan Stanley & Co. LLC; Prime Dealer Services Corp.; Strategic Investments I, Inc.; UBS AG; UBS Americas Inc.; UBS Securities LLC; UBS Financial Services Inc.; EquiLend LLC; and EquiLend Holdings LLC.

3. Defendants' deadlines to answer, move or otherwise respond to the Complaint in this action are hereby vacated.



4. The following briefing schedule shall govern Defendants' forthcoming motion to dismiss for lack of standing and capacity to sue.

Defendants' Pre-Motion Letter (3 Pages)	March 23, 2018
Plaintiff's Pre-Motion Letter Response (3 Pages)	April 4, 2018
Defendants' Joint Opening Brief (20 Pages)	No later than 45 days after the pre-motion conference
Plaintiff's Opposition Brief (20 Pages)	No later than 45 days after the filing of Defendants' opening brief
Defendants' Reply Brief (10 Pages)	No later than 21 days after the filing of Plaintiff's opposition brief

5. Should the Court deny Defendants' motion, Defendants shall answer, move against or otherwise respond to Plaintiff's Complaint within 45 days of such denial, with Plaintiff's opposition to any motion(s) to dismiss due 45 days later, and Defendants' reply due 30 days after that.

6. All discovery in this action shall be stayed pending resolution of Defendants' motion(s) to dismiss.



DATED: March 16, 2018

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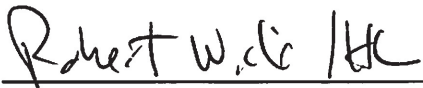
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IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HON. RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF NEW YORK

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